

1

2

3

4

5

6

7

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

8

9

Darla Padgett, et al., NO. C 04-03946 JW

10

Plaintiffs,

11

v.

12

City of Monte Sereno, et al.,

13

Defendants.

14

15

---

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANT  
BRIAN LOVENTHAL'S EX PARTE  
MOTION FOR STAY OF  
PROCEEDINGS**

16

17

18

19

20

21

22

23

24

25

26

27

28

On September 4, 2007, the Court ordered terminating sanctions against Defendant Brian Loventhal for spoliation of evidence. (See Docket Item No. 405.) The Court struck Defendant Loventhal's answer and entered default against him. A trial on damages against Defendant Loventhal is currently scheduled to begin on January 29, 2008. (See Docket Item No. 415.)

Presently before the Court is Defendant Loventhal's motion to stay all proceedings in this action pending a ruling on his application for a writ of mandamus filed with the Ninth Circuit Court of Appeals. (hereafter, "Motion," Docket Item No. 460.) Defendant Loventhal seeks to vacate the Court's order awarding terminating sanctions. (Motion at 1.) Defendant Loventhal contends a stay is warranted in the interest of judicial economy. (Motion at 4.)

Plaintiffs oppose Defendant Loventhal's motion on the grounds that a stay in the proceedings would create unnecessary delay. (Memorandum in Opposition of Defendant's Ex Parte Application for Stay of Proceedings During the Pendency of Defendant Brian Loventhal's Petition for Writ of Mandamus Filed with the Ninth Circuit Court of Appeals at 1, hereafter, "Opposition," Docket Item

1 No. 465.) Plaintiffs are concerned that a stay in the action would prevent the completion of  
2 outstanding discovery requests. (Id.)

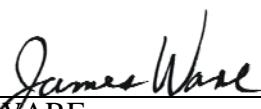
3 A potential writ will impact the scope and timing of the trial in this case. Accordingly, the  
4 Court finds its appropriate to stay proceedings with regard to the trial. However, since the writ is  
5 limited to the issue of terminating sanctions as to Defendant Loventhal, even if it is granted, the trial  
6 will proceed on the issues of liability and damages as to both Defendants Loventhal and Wright.  
7 Thus, the Court find that it is not necessary to stay discovery.

8 Accordingly, the Court orders as follows:

- 9     1.     The Court GRANTS Defendant Loventhal's motion to stay with respect to all trial  
10         proceedings.
- 11     2.     The Court DENIES Defendant Loventhal's motion to stay with respect to discovery  
12         and pre-trial matters.
- 13     3.     The Court VACATES all trial and pretrial dates.

14 Defendants shall file with the Court a Case Management Statement within ten (10) days from the  
15 date of the Ninth Circuit's decision. The Court will set a Further Pretrial Conference once a  
16 mandate is issued.

17  
18 Dated: December 20, 2007

  
\_\_\_\_\_  
JAMES WARE  
United States District Judge

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

United States District Court

For the Northern District of California

**1 THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Darla Kaye Padgett Actiontkr@aol.com  
Joseph C. Howard jhoward@hrmrlaw.com  
3 Thomas H R Denver tdenver@mediationmasters.com  
Todd Holton Master tmaster@hrmrlaw.com

**Dated: December 20, 2007**

## **Richard W. Wieking, Clerk**

By: /s/ JW Chambers  
**Elizabeth Garcia**  
**Courtroom Deputy**